United Nations A/73/354

General Assembly

Distr.: General
30 August 2018

Original: English

Seventy-third session
Item 72 (b) of the provisional agenda*
Elimination of racism, racial discrimination, xenophobia and related intolerance: comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action

Programme of activities for the implementation of the International Decade for People of African Descent

Report of the Secretary-General**

Summary

Under the programme of activities for the implementation of the International Decade for People of African Descent, great importance is placed on preventing and countering racial profiling. The present report, submitted pursuant to General Assembly resolution 69/16, provides an overview of experiences of racial profiling encountered by people of African descent, drawing on responses to a questionnaire circulated to key stakeholders by the Office of the United Nations High Commissioner for Human Rights. The applicable international legal framework, actions by international human rights mechanisms and documented examples of good practices are highlighted in the report, which also contains specific recommendations for countering and preventing racial profiling.

* A/73/150.

** The present report was submitted late owing to a delayed clearance process beyond the control of the drafting entity.

18-14343 (E) 120918

Please recycle

I. Introduction

A. Background

1. The present report is submitted pursuant to General Assembly resolution 69/16, by which the Assembly adopted the programme of activities for the implementation of the International Decade for People of African Descent and requested the Secretary-General to submit an annual progress report on the implementation of the activities of the Decade. In the resolution, the Assembly noted the common problem of racial profiling and called for the design, implementation and enforcement of measures to eliminate the problem. The report provides an overview of the types of racial profiling experienced by people of African descent, drawing on responses to a questionnaire circulated by the Office of the United Nations High Commissioner for Human Rights (OHCHR) to key stakeholders,[1] the applicable international legal framework, actions by international human rights mechanisms and documented examples of good practices.

2. While the report presents illustrative examples of manifestations and impacts of racial profiling on people of African descent, greater efforts to collect information from other countries are required to address the problem.

B. Definition of racial profiling

3. There are multiple understandings of the notion of profiling. In the context of law enforcement, profiling has been defined as "the systematic association of sets of physical, behavioural or psychological characteristics with particular offences and their use as a basis for making law enforcement decisions".[2] In his report of 2015, the former Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, indicated that racial and ethnic profiling could be commonly understood to mean "a reliance by law enforcement, security and border control personnel on race, colour, descent or national or ethnic origin as a basis for subjecting persons to detailed searches, identity checks and investigations" or for determining whether an individual was engaged in criminal activity (A/HRC/29/46, para. 2).

4. Racial profiling is incompatible with the protection of human rights and may be found in practice among police, customs, immigration and national security agencies. It is often manifested in the context of stops, identity checks, personal searches, arrests, raids, border and customs checks, home searches, targeting for surveillance or immigration decisions carried out by such agencies.

5. Race, colour, descent or national or ethnic origin may legitimately be used by law enforcement agents as part of credible suspect descriptions related to specific

[1] In March 2018, OHCHR circulated a questionnaire addressed to all relevant stakeholders requesting information for the present report and received written submissions from 13 Member States (Argentina, Colombia, Cyprus, Ireland, Italy, Mexico, Nigeria, Portugal, Romania, the Russian Federation, Spain, Turkey and the United States of America), experts associated with human rights treaty bodies and special procedures mandate holders; national human rights mechanisms; and non-governmental organizations. The submissions are available at www.un.org/en/events/africandescentdecade.

[2] United Nations, Counter-Terrorism Implementation Task Force Working Group on Protecting Human Rights while Countering Terrorism, *Basic Human Rights Reference Guide: The Stopping and Searching of Persons in the Context of Countering Terrorism*, updated 2nd ed., (New York, March 2014), p. 12.

crimes, for example, as provided by witnesses or by intelligence sources.[3] In such cases, however, suspicion is based on reasonable and objective grounds about a particular crime or specific suspect, rather than on stereotypes or generalizations about the kinds of people that tend to commit crimes.

6. It should be noted that profiling can also be biased on the basis of sex, gender or religion or other prohibited or intersecting grounds. Those practices should be also addressed.

C. Examples of racial profiling of people of African descent

7. Concerns about racial profiling of people of African descent have been expressed in regard to various countries. Such concerns include the findings of the Human Rights Committee, the Committee on the Elimination of Racial Discrimination, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the Working Group of Experts on People of African Descent through its country visits.

8. For example, during its country visit to Brazil, the Working Group found that there was an overrepresentation of Brazilians of African descent in the criminal justice system and in prisons, and a culture of racial profiling at all levels of the justice system (A/HRC/27/68/Add.1, para. 67).

9. From a mission to Canada, the Working Group highlighted that there was evidence of racial profiling in the practices used by the law enforcement authorities in Ottawa (A/HRC/36/60/Add.1, para. 35). The police practice of "carding", or stopping, questioning and documenting subjects suspected of a crime, disproportionately affected people of African descent. A York University research team working on the Ottawa Police Service Traffic Stop Race Data Collection Project documented that people of African descent faced disproportionately high incidences of being stopped in traffic. Although drivers of African descent represented less than 4 per cent of the driving population in the city, they were stopped 7,238 times during the period 2013–2015, which represented about 8.8 per cent of the total stops during that period, or 2.3 times more than could be fairly expected (ibid.).[4]

10. In her report of 2018, the current Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance addressed the issue of profiling in the context of access to citizenship and other status (A/HRC/38/52). She noted that ethno-nationalist ideologies might, in some cases, be implicitly manifested in legal and policy frameworks that systematically excluded specific racial, ethnic or national minorities from citizenship status, even where members of those minority groups had been territorially resident for multiple generations (ibid., para. 47). The phenomenon has had an impact on persons of African descent in various regions. For example, in the Dominican Republic, it was reported that individuals of Haitian descent were treated in a discriminatory manner in the registration offices responsible for issuing important identity documents (A/HRC/7/19/Add.5-A/HRC/7/23/Add.3, para. 62). Although many people in the Dominican Republic did not have proper identification documents, only those with "dark skins and Haitian features" were presumed to be "illegal" (ibid.). Similarly, the

[3] According to the Working Group, "when a terrorist crime has been committed or is in preparation and there is evidence or information raising reasonable grounds to assume the suspect fits a certain descriptive profile, then reliance on such characteristics as ethnic appearance, national origin or religion may be justified" (ibid., p. 14).

[4] See also Lorne Foster, Les Jacobs and Bobby Siu, "Race data and traffic stops in Ottawa, 2013–2015: a report on Ottawa and the police districts", research report prepared for the Ottawa Police Service, October 2016, pp. 3–4.

Committee on the Elimination of Racial Discrimination expressed concern of the increased use of racial profiling by local law enforcement agencies in the United States of America to determine immigration status and to enforce immigration laws (CERD/C/USA/CO/7–9, para. 18).

II. International human rights law, legal and policy framework and the work of human rights mechanisms

11. Racial profiling violates a number of key principles and rights under international human rights law. These include principles of equality and non-discrimination contained in article 2 of the Universal Declaration of Human Rights, article 2 of the International Covenant on Civil and Political Rights, articles 1, 2 and 5 of the International Convention on the Elimination of All Forms of Racial Discrimination and article 2 of the Convention on the Rights of the Child. Those provisions offer a range of generalized protections of rights and freedoms against discrimination on such grounds as race, colour, descent, ethnic origin, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The provisions include obligations on States to take steps to eliminate discrimination through laws, policies and institutions.

12. According to article 7 of the Universal Declaration of Human Rights and article 26 of the International Covenant on Civil and Political Rights, all persons are equal before the law and are entitled without any discrimination to the equal protection of the law and to equal protection against discrimination. Racial profiling violates those rights.

13. In addition, racial profiling may have a negative impact on peoples' enjoyment of a number of other human rights, including the rights to life, liberty and security; to privacy; to freedom of movement; to protection against arbitrary arrest and other interventions; to effective remedy; to protection of the best interests of the child.

14. While international human rights treaties do not directly refer to racial or ethnic profiling, several international human rights mechanisms have explicitly highlighted racial profiling as a violation of international human rights law. A 2009 decision by the Human Rights Committee was the first decision by a treaty monitoring body that directly acknowledged racial profiling as unlawful discrimination (*Williams Lecraft v. Spain*). In the landmark case, a woman of African descent had been subjected to an identity check at a railway station solely on the grounds of her ethnicity. In its views, the Committee stated that police identity checks motivated by physical or ethnic characteristics were contrary to the international human right to non-discrimination, violating article 26, read in conjunction with article 2 (3), of the International Covenant.[5]

15. The Committee on the Elimination of Racial Discrimination, the treaty body that monitors States' implementation of the International Convention, has addressed the issue of racial profiling in three general recommendations. These include its general recommendation No. 13 (1993) on the training of law enforcement officials in the protection of human rights, in which it stressed that law enforcement officials should receive intensive training to ensure that, in the performance of their duties, they respect and protect human dignity and maintain and uphold the human rights of all persons, without distinction as to race, colour or national or ethnic origin.

16. In its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee provided detailed guidance to States regarding national strategies aimed at combating racial discrimination in the criminal justice system, including

[5] Communication No. 1493/2006, *Williams Lecraft v. Spain*, views adopted on 27 July 2009.

changes to legislation, the development of training and the collection of statistics on the involvement of different social groups within the criminal justice system. Importantly, the Committee indicated that States should prevent questioning, arrests and searches that are in reality conducted solely on the basis of a person's physical appearance, colour, features, race or ethnicity or any profiling that exposes that person to greater suspicion.

17. In the Committee's general recommendation No. 34 (2011) on racial discrimination against people of African descent, which includes a section on the administration of justice, the Committee suggests that State parties should take measures to prevent discrimination by the police or other law enforcement agencies and officials against people of African descent, especially in connection with arrest and detention, and ensure that people of African descent are not victims of practices of racial or ethnic profiling.

18. In their concluding observations issued in response to regular reports from States parties to various instruments, treaty bodies provide opportunities to highlight positive and negative developments in the implementation of the treaties and make recommendations for improvement. The Committee on the Elimination of Racial Discrimination and the Human Rights Committee have expressed concerns about the use of racial profiling and recommended that States address the practice. The Human Rights Committee has issued detailed guidance recommending the adoption of legislation to ban racial profiling, the recording of stops and searches, the provision of records to people who were stopped or searched and the sanctioning of officials engaging in racial profiling.[6]

19. In the Durban Declaration and Programme of Action, adopted by Member States at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Durban, South Africa, in 2001, States were urged to design, implement and enforce effective measures to eliminate racial profiling, comprising the practice of police and other law enforcement officers relying, to any degree, on race, colour, descent or national or ethnic origin as the basis for subjecting persons to investigatory activities or for determining whether an individual is engaged in criminal activity.

20. At the regional level, the European Commission against Racism and Intolerance, in its general policy recommendation No. 11 (2007) on combating racism and racial discrimination in policing, explicitly condemns racial profiling as a form of racial discrimination. The Inter-American Commission on Human Rights has also identified racial profiling as a problem that affects people of African descent especially.[7] The African Charter on Human and People's Rights also includes the rights to freedom from discrimination, to equality before the law and equal protection of the law, to personal liberty and protection from arbitrary arrest and to freedom of movement, all of which are undermined by racial profiling.

III. Impacts of racial profiling

21. While the consequences of racial profiling have not been the subject of systematic research, various studies suggest that it may have negative effects on the attitudes and

[6] See, for example, CERD/C/ESP/CO/21–23, paras. 27 and 28 (Spain); CERD/C/SVN/CO/8–11, para. 8 (d) (Slovenia); CERD/C/POL/CO/20–21, para. 11 (Poland); CERD/C/IRL/CO/3–4, para. 18 (Ireland); CERD/C/NLD/CO/19–21, paras. 13–16 (Netherlands); and CCPR/C/GBR/CO/6, para. 29 (United Kingdom of Great Britain and Northern Ireland); CCPR/C/AUT/CO/5, para. 20 (Austria);CCPR/C/JPN/CO/6, para. 20 (a) (Japan).

[7] Inter-American Commission on Human Rights, *The Situation of People of African Descent in the Americas* (OEA/Ser.L/V/II. Doc.62).

well-being of the people and communities it targets. For example, during its country visit to Panama, the Working Group of Experts on People of African Descent learned that the police often targeted young people of African descent, which bred anger, frustration and a lack of faith in the police force (A/HRC/24/52/Add.2).

22. In his report of 2007, the former Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism noted that, since 11 September 2001, law-enforcement authorities around the globe had adopted measures based on terrorist profiles, which included characteristics such as a person's presumed race, ethnicity, national origin or religion (A/HRC/4/26, para. 34). He stressed that terrorist-profiling practices based on "race" were incompatible with human rights principles and that such profiling practices were unsuitable and ineffective means of identifying potential terrorists and that they also entailed considerable negative consequences that might render such measures counterproductive in the fight against terrorism (ibid., para. 83).

23. Studies have suggested that racial profiling may also be ineffective and counterproductive as a general law enforcement tool. Specifically, research has suggested that people targeted by law enforcement authorities tend to have less trust in those authorities and, as a result, be less willing to cooperate with police, thereby potentially limiting the effectiveness of the latter. Racial profiling may also contribute to the broader stigmatization and negative stereotyping of targeted groups, which results in fewer social and economic opportunities for members of those groups and may, in turn, lead to their embracing of illegitimate or criminal lifestyles.[8]

24. Racial profiling also represents a missed opportunity to apply more effective strategies. In the context of street policing, for example, research has highlighted strategies that have a real impact on crime, such as "hotspot policing", whereby enforcement efforts are focused on very small geographical areas in which crime is concentrated; problem-oriented approaches to policing that rely on problem-solving methods; and focused deterrence approaches that use a variety of strategies to increase the deterrence of crime with regard to genuine, high-rate offenders.[9]

IV. Good practices

A. Overview

25. Law enforcement agents engage in racial profiling for a variety of reasons, including individual factors and agent biases, which may be subconscious or implicit. Such factors and biases may also be reinforced by the collective endorsement of racial profiling within institutions and by the lack of any human rights culture within law enforcement agencies. Addressing the issue requires a comprehensive policy framework.

26. Fortunately, as recognition of racial profiling has increased, so has the variety of strategies adopted by Governments, law enforcement agencies and civil society organizations to counter the problem. Such strategies may involve laws and policies that prohibit racial profiling and provide guidance on appropriate conduct by law enforcement officials; systems of data collection and monitoring that track police activities; mechanisms for the internal and external accountability of law enforcement

[8] Open Society Justice Initiative, *Reducing Ethnic Profiling in the European Union: A Handbook of good practices* (New York, Open Society Foundations, 2012).

[9] See, for example, Anthony A. Braga, Andrew V. Papachristos and David M. Hureau, "The effects of hot spots policing on crime: an updated systematic review and meta-analysis", *Justice Quarterly*, vol. 31, No. 4 (2014).

personnel; greater community involvement in the development of law enforcement policies and practices; and improvements to training and recruitment of law enforcement personnel.

27. Although few of those practices have been the focus of rigorous research and evaluation, some studies have suggested that such practices, when combined, may help to reduce patterns of racial profiling. This outcome was seen to have occurred in some English police agencies following the introduction of reforms designed to challenge bias in stop and search decision-making.[10] It was also seen in Spain, where there was a perceived decline in bias in encounters between police and members of the public following the introduction of reforms as part of a series of pilot programmes.[11]

B. Prohibitions against racial profiling and guidance for non-discriminatory law enforcement

28. It is important that States ensure formal prohibitions against racial profiling. Such prohibitions may take the form of State laws, codes of conduct and ethics or standard operating procedures for law enforcement agencies. At the most general level are legal frameworks that prohibit racial discrimination and that may apply to the practice of racial profiling. An example of a law upholding equality enacted in Colombia is provided in box 1. Similar laws were reported by several other countries, including Argentina, Ireland, Mexico, South Africa, Spain and Turkey.

Box 1
Colombia: statutory protections against discrimination

Colombia reported the existence of various legal norms designed to protect people of African descent and members of other minority groups from racial profiling by law enforcement officials. These norms include the Political Constitution of 1991, which provides that no person should be discriminated against for reasons of sex, race, national origin, language, religion, political opinion or philosophy and that all people must therefore receive the same treatment and enjoy the same rights and opportunities. In addition, article 35 of Act 734 of 2002 prohibits any distinction, exclusion, restriction or preference by any public servant based on race, colour, descent or national or ethnic origin that has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

29. Beyond such general frameworks, some States have issued formal and explicit guidelines that specifically prohibit ethnic or racial profiling and are intended to help police to make suspicion-led decisions. Such guidelines may take the form of written laws, codes of conduct or agency policies. Boxes 2 and 3 contain descriptions of such guidelines used in the Netherlands and in England and Wales, respectively.

[10] Joel Miller, "Stop and search in England: a reformed tactic or business as usual?" *British Journal of Criminology*, vol. 50, No. 5 (1 September 2010).

[11] Open Society Justice Initiative and Plataforma por la Gestión Policial de la Diversidad, *Fair and Effective Police Stops: Lessons in Reform from Five Spanish Police Agencies — Technical Report* (New York, Open Society Foundations, 2015).

Box 2
Netherlands: guidelines for police on avoiding discrimination during control activities

On the basis of the Police Act 2012, revised guidelines were issued to the Dutch national police on how to select "suspect" persons and cars when carrying out controls, using guidelines provided by the European Commission against Racism and Intolerance in its general policy recommendation No. 11 (2007) on combating racism and racial discrimination in policing. Police officers must now explain every control carried out with regard to any person in terms of the individual's behaviour, using objective criteria, while disregarding personal characteristics such as ethnicity or skin colour. As a consequence, the police may no longer select suspect persons solely or predominantly on the grounds of skin colour, descent and/or religion.[a]

[a] See also European Commission against Racism and Intolerance, *ECRI Report on the Netherlands: Fourth Monitoring Cycle* (CRI(2013)39).

Box 3
England and Wales, United Kingdom of Great Britain and Northern Ireland: guidance on permissible and non-permissible suspicion for police searches

The Police and Criminal Evidence Act 1984 regulates police powers in England and Wales. The Act relies on several codes of practice, which are subject to periodic modification. Code A, which regulates the exercise by police officers of statutory powers to stop and search, stipulates that reasonable suspicion can never be supported on the basis of personal factors. Accordingly, unless the police have information or intelligence that provides a description of a person suspected of carrying an article for which there is a power to stop and search, the following factors cannot be used, alone or in combination with each other, or in combination with any other factor, as the reason for stopping and searching any individual, including any vehicle which they are driving or in which they are being carried:

(a) A person's physical appearance with regard, for example, to age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation or the fact that the person is known to have a previous conviction;

(b) Generalizations or stereotypical images of certain groups or categories of people as more likely to be involved in criminal activity.

Reasonable grounds for suspicion should normally be linked to accurate and current intelligence or information relating to articles for which there is a power to stop and search that are being carried by individuals or in vehicles in any locality, but may also exist without specific information or intelligence and on the basis of the behaviour of a person.

C. Awareness-raising, training and recruitment

30. Efforts to influence the behaviour and decision-making of law enforcement agents require that they be made aware of the context of the communities they serve and that they fully understand the laws and policies intended to govern their own conduct. Such efforts should take place at the institutional level and in the context of broader reforms that address policies and systems of accountability, as described

below. Awareness-raising should be led by key officials responsible for drafting internal policies and by those responsible for internal accountability and training.

31. One approach to raising awareness is through the training of law enforcement agents. Many States, including Australia, Cyprus, Guatemala and Nigeria, provide training focused on human rights and addressing racial discrimination. Box 4 provides a description of awareness-raising workshops organized by OHCHR in Brazil, addressed in particular to government bodies and civil society.

Box 4

Brazil: raising awareness of government officials and civil society through workshops organized by the United Nations

In November and December 2017, the United Nations country team in Brazil, OHCHR and the Department of Public Information, through the United Nations information centre in Rio de Janeiro, organized two workshops on racial profiling. The meetings were attended by representatives of civil society organizations, government bodies, academia, the Inter-American Commission on Human Rights and United Nations agencies in the country. The aim of the workshops was to exchange experiences and good practices and identify opportunities for action within the United Nations and other international organizations to prevent and counter racial profiling. Participants analysed the context for and challenges to addressing racial profiling, torture and abuse by law enforcement officials in Brazil. Individual cases and records of violations were presented as ways raise awareness about such practices. The workshops were organized within the framework of the Vidas Negras (Black Lives) public information campaign, led by the country team and supported by the Department of Public Information. The campaign is aimed at raising awareness, especially among decision makers and Brazilian society, about violence against black youth in Brazil and its lethal consequences. The campaign has been engaging key public actors and, since the launch of its website (https://nacoesunidas.org/vidasnegras) in November 2017, has reached over 35 million people through various social media platforms.

32. Non-discriminatory law enforcement is also supported through the recruiting and retention of officers from diverse backgrounds, to make them more representative of the populations they police. This increased representation has the potential to influence the culture of agencies and the attitudes of staff, which, in turn, is expected to produce less biased decision-making. This approach to diverse hiring taken in Sweden is described in box 5.

Box 5

Sweden: diversity in police recruitment

Prior to the introduction of the Spira project in 2005, police in Stockholm had few employees from a non-Nordic background. The project was aimed at increasing ethnic minority representation in the police force, beginning in the borough of Södertälje. Out of 140 applications from members of ethnic minorities, 17 people were employed in various civilian positions, with the expectation that they would later take on police officer roles. The project was subsequently rolled out across the rest of Stockholm, and in 2009, 70 people, most of non-Nordic origin, were offered employment with the police.[a]

[a] Open Society Justice Initiative, *Reducing Ethnic Profiling in the European Union*.

D. Community engagement

33. Constructive engagement between law enforcement agencies and community representatives contributes to non-discriminatory law enforcement policies and practices. This approach has the potential to improve communication between law enforcement authorities and the community, raise awareness among law enforcement agents of the needs and expectations of the members of the racial, ethnic and religious communities they serve. It can also enable community members to provide input for the development of police policies and hold law enforcement authorities accountable for their policies and practices, for example, through reviews of records, statistics and policing policies. Box 6 presents an example of community monitoring of stop and search encounters in London. Similarly, community involvement in training and capacity-building for police in Pernambuco, Brazil, is described in box 7.

Box 6
United Kingdom of Great Britain and Northern Ireland: community monitoring groups and stop and search activities (London)

In London, a series of local community monitoring groups have been established within each London borough to review the practice of stop and search by the city's Metropolitan Police Service. Community monitoring groups are made up of members of the community and are supported by a London-wide community monitoring network. Group members may draw on potential sources, including local government, police associations, local charities and community-based organizations, in carrying out their reviews. The role of the groups is to hold police accountable, scrutinize the practice of stop and search, including patterns of stopping and searching members of ethnic minorities, and provide local communities with a voice through which to address their local police in relation to stop and search activities. As part of this project, the groups are provided with data on stop and search encounters that they can then review.[a]

[a] Metropolitan Police Authority, "A practical guide to stop and search community monitoring groups", August 2009.

Box 7
Brazil: collaboration between civil society groups and police (Pernambuco)

The Working Group of Experts on People of African Descent reported that, in Pernambuco, Brazil, the Group against Institutional Racism, which was created in 2009, collaborates with the local police force in a number of areas. This collaboration includes providing training and capacity-building for the military police. The group also runs a hotline for reporting racist crimes. In addition, the organization carries out public campaigns against racism, organizes cultural events and conferences and provides support to the Brazilian communities of African descent, including members of the *quilombola* and *terreiro* communities (see A/HRC/27/68/Add.1).

E. Data collection

34. Important components of efforts to challenge racial profiling are the collection and analysis of data on law enforcement practices such as identity checks, traffic

stops, migration control or border searches, through which the racial and ethnic origin of the targeted individual is recorded. The data collected for analysis must therefore be clearly separated from information collected for intelligence purposes. A comprehensive and predetermined legal framework is needed with regard to the collection, access, storage and removal of such data. Data should be collected in accordance with international human rights and fundamental freedoms, using mechanisms such as privacy guarantees and data protection regulations to control the dangers of misuse, stigmatization and negative stereotyping. One way to protect the identity of the individuals concerned is to anonymize the data after collection.

35. The collection of data may result in law enforcement agents becoming more thoughtful about their decision-making, more accountable to the persons they are targeting and subject to stronger supervision and management. It would also allow for scrutiny of individual encounters and of broader patterns and trends in the use of police tactics. Analysis of the data would also support the strategic management of law enforcement operations, which should help improve the fairness and effectiveness of police activities. Importantly, it would provide an opportunity to measure levels of racial disparity and to consider strategies for addressing biases. It would also provide opportunities for external accountability by community and human rights organizations. The use of a mobile app to record stops in the West Midlands region of the United Kingdom of Great Britain and Northern Ireland is described in box 8.

Box 8
West Midlands, United Kingdom of Great Britain and Northern Ireland: mobile app for recording police stops

On 30 August 2017, a new mobile app was launched to make stops and searches quicker and more efficient. The app reportedly makes it easier to carry out a practice that has been required by law for many years. The eSearch app allows officers to record details of street encounters on their smartphones without the need to call contact centre staff. The location of each search is automatically recorded by the Global Positioning System, and the app is expected to cut demand on force contact staff by almost 1,000 calls a month. Officers are to input details directly via their phones and receive a unique reference number without needing to wait for contact centre staff to record searches.[a]

[a] West Midlands Police, "New 'app' set to speed up stop and search process", 30 August 2017.

F. Internal accountability

36. The extent to which law enforcement agents avoid racial profiling practices and adhere to written standards of decision-making and conduct is likely also an indication of the willingness of managers and supervisors to promote non-discriminatory practices within law enforcement agencies, to monitor behaviours and to challenge those behaviours when they deviate from policy. That approach can be supported by the availability of data and analyses on agent decision-making and practice. The approach also reflects policies and procedures that ensure that practices indicative of racial profiling are routinely assessed and challenged.

37. One method is for agency managers to conduct policy audits in which they review existing policies, operations and practices that may be contributing to patterns of racial profiling. The fact that that senior officials have increased supervision of the use of discretionary powers by law enforcement officials in areas related to racial

profiling is also important. Ideally, such audits should be carried out with the engagement of members of the broader community, who can help shape questions and present concerns, and of staff at different levels within the organization.

38. Box 9 provides a description of an internal audit conducted by the Toronto Police Service in Canada. Box 10 provides an example of internal accountability that relies directly on data on police tactics routinely collected within the Hertfordshire Constabulary in the United Kingdom in order to examine individual agent conduct and stop and search patterns.

Box 9
Canada: reviewing agency practices (Toronto)

In Canada, the Toronto Police Service conducted an internal audit in 2012, when the Chief of Police initiated a review of the agency's practices in relation to community engagement, focusing on police stops. The exercise involved consultations with a cross section of staff and community members and led to several recommendations, including a new "core value" focused on non-discrimination, the creation of a community advisory committee to advise the agency on issues relating to racial profiling and the development of an early warning system to detect patterns of possible bias among officers.[a]

[a] Toronto Police Service, *The Police and Community Engagement Review (The PACER Report): Phase II — Internal Report and Recommendations* (2013).

Box 10
England, United Kingdom of Great Britain and Northern Ireland: identifying officers with potentially problematic patterns of contact

In the period 2006–2007, in Hertfordshire Constabulary in the United Kingdom of Great Britain and Northern Ireland, people of African descent were five times more likely to be stopped and searched than the majority of the population. Under new reforms implemented in the period 2007–2008, stop forms and software were introduced to analyse stop and search patterns. The software was programmed to identify individual officers who stopped members of minority groups substantially more often than could be expected given their job assignments.

Initially, 25 officers were flagged for having high rates of stopping members of minority groups. The analysis was repeated monthly. The force diversity unit conducted interviews with the officers that had been initially identified as conducting a disproportionate number of stops and searches of members of minority groups and with those whose stop and search activities were identified as being proportionate. The interviews highlighted problems with some officers' understanding of appropriate grounds for conducting stops and searches. It was further suggested that some operations, despite having legitimate objectives, had disproportionate impacts on members of minority groups. Under the programme, officers continued to be reviewed on a monthly basis, with emails sent automatically to the supervisors of officers flagged for disproportionate stop and search rates with regard to minorities. The emails included details of the officers' behaviour and a list of questions for supervisors to raise with the officers. The supervisors also received training in strategies to use when interviewing the officers in question. Supervisors were expected to report back on those interviews and provide recommendations for action or training.

Subsequently, rates of disproportionality were reduced among the targeted officers and in the force as a whole.[a]

[a] European Union Agency for Fundamental Rights, *Towards More Effective Policing: Understanding and Preventing Discriminatory Ethnic Profiling — A Guide* (Luxembourg, Publications Office of the European Union, 2010).

39. Data collected on police encounters can also be used to reflect critically on the broader pattern of police tactics and their impact on minorities. In an example from Spain (see box 11), an analysis of records generated by ethnic and racial monitoring of police stops was used to reshape police policies and practices to minimize patterns of bias.

Box 11
Spain: refocusing police identity checks on the basis of monitored data (Fuenlabrada)

The Open Society Justice Initiative reported that, in Fuenlabrada, police identity checks were monitored through a pilot project to record such checks. An analysis of the monitoring data at the beginning of the pilot project showed high rates of identity checks characterized by officer discretion in deciding whom to stop. The types of checks monitored involved stops conducted in "areas under intensive police control", as part of "preventive operations" and for "suspicious behaviour". Possibly because that discretion allowed officers to draw on generalizations and stereotypes, such checks were characterized by a substantial overrepresentation of foreign nationals. Following analysis of the monitoring data, managers modified the way frontline officers were tasked. Over a period of six months, those modifications led to substantial reductions in the three types of identity checks being monitored (areas under intensive police control, preventive operations and suspicious behaviour), of 90 per cent, 76 per cent and 56 per cent, respectively. Importantly, the reduction in those discretionary stops was accompanied by a substantial reduction in the overrepresentation of foreigners during the entire six-month pilot period.[a]

[a] Open Society Justice Initiative, *Fair and Effective Police Stops*.

G. External accountability

40. The ability of external actors, whether members of the public, community groups or the media or international human rights mechanisms, national human rights institutions or equality bodies, to challenge inappropriate law enforcement practices presents another way to control racial profiling. Those actors' ability to mount such challenges can be supported by ensuring their access to information, data and analyses on agent decision-making and practice or through the exercise of their role in reviewing public complaints.

41. One approach to external accountability is to provide a record of a stop or search to the member of the public involved, including information on the encounter and the reasons it was conducted. This approach provides a form of "on-the-spot" accountability and is often coupled with the data collection approaches described above. Variations of it have been used in several countries, including Bulgaria, Spain and the United Kingdom.

42. External accountability can also be provided by commissions or ombudspersons that are responsible for responding to public complaints about discrimination. Examples can be found in Portugal, South Africa and the United Kingdom. Box 12 provides an example from the Australian Human Rights Commission, which is responsible for public complaints related to discrimination. Box 13 provides an example from the United States, where the Civil Rights Division of the Department of Justice may investigate and bring suit against agencies engaged on racial profiling.

Box 12
Australia: protection of the rights to non-discrimination (Australian Human Rights Commission)

The Australian Human Rights Commission reported that Australian jurisdictions have legislative prohibitions against racial discrimination. To uphold those standards, the Australian Human Rights Commission has a statutorily appointed a Race Discrimination Commissioner with a mandate to investigate complaints under anti-discrimination legislation. Under its complaint handling function, the Commission considers matters of alleged discrimination on the basis of race and racial hatred. The investigation and conciliation service provides a free and impartial mechanism for parties to resolve complaints relating to alleged racial discrimination without needing to go to court. Many outcomes of complaints resolved through the Commission's investigation and conciliation service extend beyond individual compensation and often include systemic outcomes such as anti-discrimination training or changes in policy. If conciliation fails, an individual may seek a determination by the federal courts.

Box 13
United States of America: bringing suits against agencies engaged in racial profiling

The United States reported that the Civil Rights Division of the Department of Justice may investigate and bring suits against agencies that engage in, or exhibit patterns or adopt practices of, racial profiling in violation of the Constitution. For example, in 2015, the Division reached a comprehensive settlement with the Los Angeles County Sheriff's Department in a suit alleging systemic discrimination in policing against African-Americans in the Antelope Valley community. After an investigation following a highly publicized police shooting in Ferguson, Missouri, the Division reached an agreement with the city in March 2016, resolving allegations of discriminatory policing against African-Americans.

43. External accountability includes having government oversight bodies and civil society groups take an active role in monitoring police activities and publicizing their findings. The media can also play an important role in that regard. In Spain, for example, local civil society groups have been actively involved in monitoring and publishing studies on police stops of members of the public and on patterns of bias (see box 14).

Box 14
Spain: civil society organizations and police accountability

The Asociación Pro Derechos Humanos de Andalusia reported that local civil society groups in Spain have been active in monitoring and advocating against police racial profiling in the country. For example, in 2016, the association published a report, together with the Institution of Peace and Conflicts Investigation of the University of Granada, on a study that involved direct observations of police stops conducted at the local bus station in Granada. The findings indicated that people of African descent were checked 42 times more than people of "Caucasian" origin. The report highlights apparently racist motives directing the checks.[a]

[a] Asociación Pro Derechos Humanos de Andalucía and Instituto de la Paz y los Conflictos, Universidad de Granada, *Identificaciones Basadas en Perfil Étnico en Granada: Estudio Realizado Mediante Observación y Entrevistas Directas* (Identity Checks Based on Ethnic Profiling in Granada: Study Conducted via Direct Observation and Face-to-Face Interviews) (Granada, 2016).

44. Civil society organizations may also challenge ethnic and racial profiling through United Nations human rights mechanisms that seek to challenge practices and help establish and reinforce precedents to which law enforcement authorities can be held accountable. One important example of such a challenge in Europe has been the litigation efforts relating to a Spanish case of racial profiling, as described in box 15.

Box 15
Spain: using United Nations human rights mechanisms

The case of *Williams Lecraft v. Spain* involved an African-American woman of Spanish citizenship who was stopped and asked for identity documents by a national police officer in a railway station in 1992. The officer indicated that Ms. Williams Lecraft had been stopped because her appearance suggested that she was more likely to be an undocumented migrant. Ms. Williams Lecraft filed a complaint, which was dismissed by a Spanish national court, and her subsequent appeal to the Constitutional Court of Spain was also unsuccessful.

Ms. Williams Lecraft subsequently took the case to the Human Rights Committee, supported by three civil society organizations: the Open Society Justice Initiative, Women's Link Worldwide and SOS Racismo Madrid. The Human Rights Committee ruled in favour of the complainant, concluding that the incident was a violation of article 26, read together with article 2 (3), of the International Covenant on Civil and Political Rights.

In its views, the Human Rights Committee called for amendments to Spanish provisions regulating police powers to conduct identity checks, noting that race, ethnicity and/or physical characteristics may not be the basis for decisions to conduct a stop for an identity check, except when they are part of a suspect description. The Committee also required that Spain instruct all police forces to issue operational guidance manuals for police officers on following those principles.[a]

[a] Communication No. 1493/2006, *Williams Lecraft v. Spain*.

V. Conclusions and recommendations

45. **The practice of racial profiling by law enforcement agencies is contrary to international legal norms, including the principle of non-discrimination and the rights to equality before the law and equal protection of the law. Moreover, evidence shows that racial profiling is not an effective law enforcement tool and should be replaced with more effective approaches. Further evidence suggests that racial profiling may also have negative effects on the attitudes and well-being of the people and communities targeted.**

46. **In response to negative consequences associated with racial profiling, national law enforcement and government bodies have developed laws and policies that prohibit the generalized use of race, ethnicity and other prohibited grounds of discrimination as a basis for suspicion and decision-making in law enforcement actions. In many cases, those laws and policies were developed with the collaboration of local and international civil society actors, as well as international human rights mechanisms. Member States should prohibit the practice of racial profiling and ensure that any strategies targeting law enforcement officers are accompanied by practical guidance on non-discriminatory decision-making.**

47. **Member States should also encourage law enforcement agencies to develop targeted training programmes that raise awareness among officers of the various social biases that may affect their conduct. Training materials should include both international human rights standards and principles and the national laws and policies that govern officers' conduct. It is vital that officers be aware of the consequences of any misconduct and that agencies and justice institutions follow through on any reported incident, making use of all accountability measures available to address the problem. Agencies should also develop recruitment and retention strategies that promote a diverse workforce reflective of the populations they serve.**

48. **Increased efforts to collect data on relevant law enforcement practices such as identity checks, traffic stops and border searches, disaggregated by factors that include the racial and ethnic identity of the targeted population, would be useful for understanding local trends and would help to raise awareness of the issue among law enforcement officers. Such data may be used to support efforts by agencies to monitor the behaviour of officers and to refine internal accountability measures. All data should be collected in accordance with human rights and fundamental freedoms, using mechanisms such as data protection regulations and privacy guarantees.**

49. **Increasing opportunities for dialogue with community leaders, civil society, national human rights institutions and equality bodies may also improve police-community relations and reduce levels and perceptions of racial profiling. Such dialogue has the potential to influence the culture of agencies and the attitudes of staff with a view to producing less biased decision-making. Close collaboration among multiple stakeholders, such as victims' groups, national human rights institutions, equality bodies and both local and national actors, often with the support of international organisations and jurisprudence from international and human rights mechanisms, has resulted in some of the most promising practices against racial profiling seen in recent years. That kind of dynamic engagement should be encouraged and lessons learned could be shared, in the spirit of cooperation, between national and local agencies and government authorities. The relevant United Nations entities can provide expertise and support to assist countries in undertaking such a comprehensive approach to eliminating racial profiling.**